

PREDETERMINATION SETTLEMENT AGREEMENT

CP# 07-14-66016

HUD# 07-14-0598-8

PARTIES TO THE SETTLEMENT AGREEMENT:

RESPONDENTS

WASHINGTON PLAZA, LLC

P.O. Box 3474

Iowa City, Iowa 52244-3474

ALLEN HOMES, INC.

P.O. Box 3474

Iowa City, Iowa 52244-3474

NEUMANN MONSON, INC.

a.k.a. "Neumann Monson Architects"

221 East College Street

Iowa City, Iowa 52240-1759

COMPLAINANT

ANGELA WILLIAMS

Commissioner, Iowa Civil Rights Commission

400 East 14th Street

Des Moines, Iowa 50319

and

IOWA CIVIL RIGHTS COMMISSION

400 East 14th Street

Des Moines, Iowa 50319

#### Complainant's Allegations:

Complainant is a member of the Iowa Civil Rights Commission (ICRC). Complainant alleged Respondents designed and constructed covered multifamily dwelling units in violation of the design and construction accessibility requirements of the Iowa Civil Rights Act (ICRA) and the federal Fair Housing Act (FHA). Complainant alleged Respondents violated the "light, switches, thermostats, electrical outlets in accessible locations" (referenced as Requirements 5) in the ICRA and FHA. In Unit 405, Complainant specifically alleged the height of the electrical outlets was measured at 14 inches, which is less than the minimum reachable height of 15 inches.

#### Description of the Subject Property

The subject property, Washington Plaza, located in Iowa City, Iowa, is comprised of a multifamily rental-unit building. According to Doug Boothroy, Director of Neighborhood and Development Services for the City of Iowa City, a final Certificate of Occupancy was issued for the subject property on September 23, 2013.

The construction of all residential units in the subject property building was based on five different designs. All designs include three-bedroom two-bathroom units. Unit Types A through D are designed to meet the minimum requirements of accessible design and construction of the FHA and ICRA, and differ from each other only in the configuration of the units and size. Type E units are designed to have a greater degree of accessibility than what is required by FHA and ICRA. The table below shows the different types of units and the total number of covered units per type.

UNIT TYPE	TOTAL COVERED UNITS PER TYPE
Type A – 881 square feet	6
Type B – 813 square feet	12
Type C – 762 square feet	6
Type D – 1,217 square feet	3
Type E – 1,316 square feet	3
TOTAL	30

This agreement includes all of the units at Washington Plaza and all of the public and common use areas – exterior/underground parking spaces, mailboxes, waste dumpsters, sidewalks, interior hallways, and elevators.

#### Respondents’ Defenses:

When asked in the questionnaire what was true or false about the allegations, Respondent Architect Neumann Monson [henceforth referred to as “Neumann Monson”] responded:

[We] [c]annot comment, as we do not know actual [height] of outlet construction. Our documents call for outlets to be placed to meet accessibility requirements of the Iowa State building code, Division VII ... (outlets, lights switches, and environmental controls must meet mounting height restrictions).

#### Report of Preliminary Findings:

ICRC Investigators inspected five units. The unit number and unit type are listed in the table below.

UNIT #	UNIT TYPE
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203	A
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307	B
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405	C
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204	D
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401	E
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After conducting an onsite inspection of these five units and the public/common use areas, ICRC Investigators found and reported the following deficiencies:

1) Other than the electrical outlets in the kitchen, bathroom, and laundry, the height of each bottom electrical-outlets located within Units 204, 307, and 405 was measured at 14 to 14.5 inches. In Unit 203, the height of all bottom electrical-outlets in the bedrooms was measured at 14.5 inches. The height of these outlets measured less than the minimum of 15 inches required by FHADM and ANSI 2003.[Requirement 5]

2) Neumann Monson states it does not know whether there is grab bar reinforcement around the showers and toilets because overseeing the construction of the subject property was not in their “scope of services.” However, Neumann Monson stated the blueprint sketches direct the builder to install blocking “for future grab bar installation.” The blueprints indicate the requirement for grab bar reinforcement as stated by Neumann Monson.

The blueprints did not include sketches indicating the specific locations or dimensions of grab-bar reinforcement areas around toilets or bathtubs. Therefore, additional information is required from Respondents to determine whether grab bar reinforcements were installed as required. [Requirement 6]

3) Inspected Units 203 and 204 have the “Pass-through Kitchens” described in Section 804.2.1 from ANSI 2003. The clear width for the path through the kitchen in Unit 203 was measured at 38 ½ inches and 38 ¾ inches in Unit 204, which is less than the minimum 40 inches required by FHADM and ANSI 2003 for a path in this type of kitchen. [Requirement 7]

Respondents’ Responses to Report of Preliminary Findings:

Respondents submitted the following responses to the reported deficiencies:

1) Dave Homewood, an electrician contracted by Respondents, stated in an email:

I would propose to change out the existing duplex receptacles with a single receptacle. That would raise the center of the outlet one inch, making any outlet that is currently 14” in height to the minimum 15” required. Any outlet currently measuring 14.5” in height would now be 15.5” in height. This remedy would also comply with the National Electrical Code for outlet requirements.

2) When asked by ICRC in an email about the presence of grab-bar reinforcement in the areas adjacent to the toilets and bathing fixtures, Respondent Owner Tom Kaut, responded:

[T]he walls are [reinforced] for grab bars and the plans show this which you have. This is also a requirement of City code. We can accommodate any handicapped person that needs grab bars that would like to rent one of our condos.

3) Respondents will increase the clear width for the path for “Pass-Through Kitchens” in all Unit Types A and D to a minimum of 40 inches.

Assessment of Deficiencies:

Respondents stated all units were built in accordance with the requirements of the 2009 International Building Code [IBC 2009], which is not one of the safe harbors accepted by HUD. IBC 2009 provides the scoping requirements and references ANSI 2003 for technical requirements for accessible design and

construction, as indicated in the IBC 2009. ANSI 2003 is one of the safe harbors accepted by HUD, as long as it is used in conjunction with the FHA, HUD's regulations, and the Guidelines.

Therefore, in order to determine compliance with the ICRA and FHA, the ANSI 2003 must be used to assess compliance with the technical requirements [i.e., the dimension requirements] and the FHADM will be used to assess compliance with the scoping requirements [i.e., what needs to be accessible]. In the event ANSI 2003 does not provide guidance on the technical requirements for a feature required to be accessible by the FHADM, ANSI 1986 will be consulted for the guidance on that technical requirement.

Following is the assessment of the reported deficiencies, based on the scoping requirements of FHADM and the technical requirements of ANSI 2003:

- 1) ICRC concurs with Respondents' proposal to change the existing duplex receptacles with a single receptacle and increase the height of the outlet to a minimum of 15 inches.
  
- 2) ICRC acknowledges Respondents' affirmation about the presence of the required grab-bar reinforcements. Although Respondents did not provide detailed information about the dimensions and type of reinforcement, Mr. Kaut stated that grab-bar reinforcement in bathrooms is part of the building code enforced by the City of Iowa City Building Inspections. The website for the City of Iowa City Building Inspection Services department indicates they are charged with the enforcement of the IBC 2009. The relevant excerpts from the City Code for Iowa City read:

17-1-1: CODE ADOPTED:

Subject to the following amendments, the 2009 edition of the international building code (IBC) and 2009 edition of the international residential code (IRC) including appendix F, radon control methods, are hereby adopted and shall be known as the Iowa City building code or the building code. Interpretations of the building official may be guided by publications of the International Code Council, Inc., or the international existing building code. (Ord. 09-4368, 12-1-2009, eff. 1-1-2010)

17-1-3: AMENDMENTS TO CODE:

The following sections of the 2009 edition of the international building code and 2009 edition of the international residential code are amended as follows:

Section R320.2 of the IRC. Add section R320.2 in the IRC as follows:

5. Wall Reinforcement: A bathroom must be provided with wood blocking installed within wall framing to support grab bars as needed. The wood blocking, when measured to the center, will be located between thirty-three inches (33") and thirty-six inches (36") above the finished floor. The wood blocking must be located in all walls adjacent to and behind a toilet, shower, or bathtub.

The property card for Washington Plaza indicates it obtained a "New Building" building permit on May 14, 2012. Based on the information gathered, it is reasonable to accept as true Respondents' affirmation that they installed the wall reinforcement adjacent to toilets and bathing facilities, which will allow for the future installation of grab bars, as required by the FHA and ICRA.

3) ICRC concurs with Respondents' proposal to widen the path at the "Pass-Through Kitchens" in all unit Types to a minimum of 40 inches.

#### Predetermination Settlement Agreement

A complaint having been filed by Complainant against Respondents with ICRC under Iowa Code Chapter 216 and there having been a preliminary inquiry, including an on-site inspection of the subject property, the parties do hereby agree and settle the above-captioned matter in the following extent and manner:

#### Acknowledgment of Fair Housing Laws

1. Respondents agree there shall be no discrimination, harassment, or retaliation of any kind against any person for filing a charge under the ICRA; or because of giving testimony or assistance, or participating in any manner in any investigation, proceeding or hearing under the ICRA; or because of lawful opposition to any practice forbidden under the ICRA.

2. Respondents agree to refrain from committing any act of discrimination in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities on the basis of race, color, creed, sex, sexual orientation, gender identity, national origin, religion, disability, or familial status, in violation of the ICRA.

3. Respondents acknowledge the FHA and ICRA make it unlawful to discriminate in the sale or rental of a dwelling, or otherwise make unavailable or deny a dwelling, to a buyer or renter on the basis of disability. 42 U.S.C. 3604(f)(1); Iowa Code § 216.8A(3)(a).

4. Respondents acknowledge the FHA and ICRA make it unlawful to discriminate in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling on the basis of disability. 42 U.S.C. 3604(f)(2)(a) and Iowa Code § 216.8A(3)(b)(1)

5. Respondents acknowledge the FHA and ICRA make it unlawful to refuse to make reasonable accommodations in rules, policies, practices, or services, when the accommodations are necessary to afford person with a disability an equal opportunity to use and enjoy a dwelling. 42 U.S.C. 3604(f)(3)(b); Iowa Code § 216.8A(3)(c)(2).

6. Respondents acknowledge as owners, developers, builders, or managers of covered multifamily dwellings – ground-floor units in a building consisting of four or more dwelling units built for first occupancy after January 1, 1992 – must build those dwellings in compliance with specific design and construction accessibility requirements, in accordance with the FHA and ICRA. Iowa Code §216.8A(3)(c)(3); 42 U.S.C. §3604(f)(3)(C).

HUD has described these accessibility requirements via regulation and in several publications, including the “Final Fair Housing Accessibility Guidelines.” 24 C.F.R. Part 100.200 et seq.; 56 Fed. Reg. 9,472. In the “Guidelines,” HUD presented the seven specific requirements as:

1. Accessible building entrance on an accessible route.
2. Accessible and usable public and common areas.
3. Usable doors.



4. Accessible route into and through the covered dwelling unit.
5. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations.
6. Reinforced walls for grab bars.
7. Usable kitchens and bathrooms.

#### Voluntary and Full Settlement

7. The parties acknowledge this Predetermination Settlement Agreement (hereinafter referred to as the Agreement) is a voluntary and full settlement of the disputed complaint. The parties affirm they have read and fully understand the terms set forth herein. No party has been coerced, intimidated, threatened, or in any way forced to become a party to this Agreement.

8. The parties enter into this Agreement in a good faith effort to amicably resolve existing disputes. The execution of this Agreement is not an admission of any wrongdoing or violation of law. Nor is the execution of this Agreement an admission by Complainant that any claims asserted in her complaint are not fully meritorious.

9. The parties agree the execution of this Agreement may be accomplished by separate counterpart executions of the Agreement. The parties agree the original executed signature pages will be attached to the body of this Agreement to constitute one document.

10. Respondents agree ICRC may review compliance with this Agreement. And as part of such review, Respondents agree ICRC may examine witnesses, collect documents, or require written reports.

#### Release

11. Complainant hereby waives, releases, and covenants not to sue Respondents with respect to any matters which were, or might have been alleged as charges filed with ICRC, the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, or any other anti-discrimination agency, subject to performance by Respondents of the promises and representations contained herein. Complainant agrees any complaint filed with any other anti-discrimination agency,

including the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, which involves the issues in this complaint, shall be closed as Satisfactorily Adjusted.

#### Disclosure

12. Because, pursuant to Iowa Code § 216.15A(2)(d), 42 U.S.C. 3610(b)(4), and 24 CFR 103.330(b), the Commission has not determined that disclosure is not necessary to further the purposes of the ICRA relating to unfair or discriminatory practices in housing or real estate, this Agreement is a public record and subject to public disclosure in accordance with Iowa's Public Records Law, Iowa Code Chapter 22. See Iowa Code § 22.13.

#### Required Modifications or Retrofits

13. Respondents agree to make the following modifications or retrofits to the subject property:

##### Light Switches, Electrical Outlets, Thermostats, and Other Environmental Controls in

##### Accessible Locations – Electrical Outlets

(a) The parties agree the height for the bottom electrical outlet in all electrical receptacles, except for those in the kitchen, bathroom, and laundry rooms, are less than the minimum height of 15 inches in Units 203, 204, 307, and 405, as required by FHADM and ANSI 2003.

(b) Respondents agree they will replace the current two-electrical outlet receptacles with single-electrical outlet receptacles at a minimum height of 15 inches in the units listed in the first paragraph of the current subsection, and in all unit Types A, B, C, and D, as required by FHADM and ANSI 2003.

##### Usable Kitchens – Clear Width of Path

(a) The parties agree the clear width of the path between the opposing kitchen countertops, appliances, and walls in Units 203 and 204, is less than the 40-inch minimum path clearance required by FHADM and ANSI 2003.

(b) Respondents agree to widen the clear width of the path in the kitchens for the units listed in the first paragraph of the current subsection, and all other unit Types A and D, the necessary distance to comply with the minimum allowable path clearance of 40 inches, as required in FHADM and ANSI 2003. Respondents agree to measure the clear width of the path as indicated in the figure below:

#### Required Timelines for Completion of Modifications or Retrofits

14. Respondents agree they will allow tenants to remain in their units while the renovations are being completed, so long as their continued stay is safe and does not unduly disrupt the renovation work. If their continued stay is not safe or unduly interferes with renovation work, Respondents agree to move the affected tenants to another suitable unit on a temporary basis, until the unit is made safe or the renovation work is completed. Respondents agree to pay all costs generated by such moves.

15. Respondents agree to make the above-required modifications or retrofits to all Unit Types A, B, C, and D – as listed on page 2 of the current agreement – as each of the units becomes vacant. Respondents agree to make the required modifications or retrofits before each of the units is rented again.

#### Mandatory Reporting Requirements

16. Respondents agree to notify ICRC when they have completed the required modifications or retrofits for each and every subject unit and the public and common use areas. Such notification shall be made within 90 days of completion. These required notifications to ICRC will continue until all required modifications or retrofits have been completed in unit Types A, B, C, and D, as listed on page 2 of the current agreement.

17. Respondents agree, as the required modifications or retrofits are made to a particular unit, ICRC may then inspect such unit, and then report the results of its inspection, addressing any outstanding deficiencies, in writing and within 30 days of the inspection, to Respondents.

If the inspection indicates outstanding deficiencies, Respondents shall correct all such deficiencies within a reasonable period of time as determined by ICRC.

18. The sale or transfer of ownership, in whole or in part, by any owner of the subject property will not affect any obligation to modify or retrofit the subject property as specified in this Agreement, unless Respondents have obtained, in writing, as a condition of sale or transfer, the purchaser or transferee's commitment to be bound by the terms of this agreement to complete all required modifications or retrofits as specified in this Agreement.

19. Within 90 days from the date of the Closing Letter from ICRC, Respondents agree to provide a written statement to ICRC, to the attention of Don Grove, Supervisor of Housing Investigations, which specifies how each of the above-required modifications or retrofits will be corrected.

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Washington Plaza, LLC

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Date

RESPONDENT

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Allen Homes, Inc.

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Date

RESPONDENT

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Neumann Monson, Inc.

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Date

RESPONDENT

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Angela Williams

Date

COMPLAINANT

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Don Grove, Acting Executive Director

Date

IOWA CIVIL RIGHTS COMMISSION